Comment on Recent Cases

Bankruptcy — Title of Trustee — Claim of Defrauded Vendor.— A creditor filed a petition to reclaim certain goods sold by it to the bankrupt on the ground that the contract of sale was induced by the bankrupt's fraud. Held that even in the case of such fraud, the title of the trustee, under § 47a, of the Bankruptcy Act, as amended in 1910, is superior to that of the defrauded vendor.[1]

In the case of unrecorded mortgages and contracts of conditional sale, good between the parties, but not against creditors with specific liens, the Supreme Court, despite earlier suggestions to the contrary,[2] had finally held that the trustee, who holds the property in the same plight as the bankrupt, took subject to these claims.[3] In this condition of the law, the amendment of 1910 was passed, providing that "such trustees as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a creditor holding a lien thereon by legal or equitable proceedings . . . ." A few of the cases have adopted a narrow view of this amendment, restricting the trustee's right to cases where a creditor had already fastened a specific lien upon the property.[4] The better considered cases, however, have treated the amendment as a substantial change of the law as announced in the Cassell case, returning to the doctrine of the Act of 1867,[5] that bankruptcy operates as a caveat and in effect an attachment and an injunction, and vests the trustee with the same superiority over non-recorded and secret claims that an attaching or execution creditor would have under the state law.[6] The principal case is in line with the latter doctrine, applying it to the claim of a defrauded vendor. However, it is not very clearly shown that under the state law, the claim of such a vendor is subject to the claims of attaching or execution creditors. The law is generally to the contrary,[7] and the learned judge contents himself with citing State decisions to the effect that a bona fide purchaser takes free from the claims of such vendor. Of this there can be no doubt; but there is not evident in the amendment any intention to put the trustee in the place

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[1] Re Whatley Bros. (Aug. 21, 1912), 199 Fed. 326.

[2] See Mueller v. Nugent (1901), 184 U. S. 1.

[3] York Mfg. Co. v. Cassell (1905), 201 U. S. 344.

[4] Re Lausman (1910), 183 Fed. 647; Re Flatland (1912), 196 Fed. 310.

[5] U. S. Stats. (1866-7), ch. 176, p. 517.

[6] Re Bazemore (1911), 189 Fed. 236; Re Farmers' Supply Co (1912), 196 Fed. 990; Re Williamsburg Knitting Mill (1911), 190 Fed. 871, affirmed sub. nom. Holt v. Henley (1912), 196 Fed. 1005.

[7] Sargent v. Sturm (1863), 23 Cal. 359, 35 Cyc. 355, and cases cited.

of such a purchaser; but only in as good a position as a creditor with a specific lien. On this ground the defrauded vendor was allowed to recover property from the trustee, in the more carefully considered case of Re J. S. Appel Co.,[8] which is the only other instance where the precise point has been presented. M. E. H.

Common Carrier — Forwarding Company.— When we recall that one of the connotations of the term "common carrier" is insurer, it becomes of vital importance to the various agencies attendant on transportation whether they shall be classed as common carriers or as ordinary bailees liable only for negligence. Is the mere contract to receive at one point and deliver to another sufficient, or must there be some relation to the act of carriage. Shall we class as a common carrier a freight forwarding company, whose business it is to collect less than carload lots from various shippers, pay the freight in its own name, and ship the combined carload to the common delivery point, making its profit from the "bulge" between the railroad's carload and less than carload rates? The Washington Supreme Court has answered this question in the affirmative, and thus held such an agency liable for the destruction by accidental fire of goods awaiting forwarding from its warehouse.[1]

The real service being performed by defendant at the time of the fire was that of warehouseman; so to hold it liable as a common carrier now, plaintiff must show that the storage was merely preparatory to a further carriage under defendant's liability, and that it would also have been liable if the goods had been destroyed en route.[2] Thus it is immaterial that defendant has hauled goods to the warehouse, since the question is whether the present storage was preparatory to a further carriage by him or by another.

Forwarding agents were common in the early history of transportation in this country. The necessity for such an intermediary between the shipper and the carrier arose from the fragmentary nature of the means of transportation, so that it required the services of an expert to select the most available route, railroad, tow-boat or lake steamer. The liability of such agencies was held to be only that of warehousemen, that is only for negligence while the goods were in their posses-

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[8] (1912), 198 Fed. 322.

[1] Kettenhofen v. Globe Transfer & Storage Co. (Oct. 30, 1912), Wash. 127 Pac. 295.

[2] Fitchburg & W. R. R. Co. v. Hanna (1856), 6 Gray 549, 66 Am. Dec. 427; Barron v. Eldridge (1868), 100 Mass. 455, 1 Am. Rep. 126; Barter v. Wheeler (1869), 49 N. H. 9, 6 Am. Rep. 434.

[3] Roberts v. Turner (1815), 12 Johns. (N. Y.), 232, 7 Am. Dec. 311; Platt v. Hibbard (1827), 7 Cow. (N. Y.), 497; Bush v. Miller (1852), 13 Barb. (N. Y.), 481; Maybin v. S. Car. Ry. Co. (1855), 8 Rich. Law (S.